

CABINET - 17 OCTOBER 2007

INTRODUCTORY TENANCIES

REPORT OF HEAD OF LANDLORD SERVICES

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RECENT REFERENCES:

CAB1439 - Delivering Decent Homes – The Housing Revenue Account Business Plan Update 2007/08, dated 28 March 2007

EXECUTIVE SUMMARY:

The potential benefits of amending the current allocations policies to adopt introductory tenancies are being reviewed to tackle an increasing problem of new tenants who breach their tenancy agreements through anti-social behaviour and/or inconsistent rent payments.

An introductory tenancy lasts for one year. Introductory tenants have fewer rights than secure tenants and can be evicted more easily. If there are no problems during the trial period the tenancy automatically becomes a secure tenancy on the anniversary of the date the tenancy started. If there are problems the landlord can decide to end the tenancy by serving a Notice of Proceedings and applying to the County Court for an immediate possession order.

RECOMMENDATIONS:

1. That an Introductory Tenancy scheme be introduced.
2. That the Head of Landlord Services work together with key stakeholders to draw up Policy and Procedures which set out how Introductory Tenancies will operate.
3. That key stakeholders including waiting list applicants, tenants, the County Council's Adult and Children's Services, Joint Housing register partners and other support agencies be consulted for their views on introducing the scheme.
4. That the Head of Landlord Services in consultation with the Portfolio Holder for Housing and Communities be authorised to settle the final details of the scheme following the consultation by way of a Portfolio Holder Decision Notice.
5. That monitoring arrangements be introduced, in line with the proposals set out in section 7, to facilitate the reporting of the effectiveness of the Introductory Tenancies to inform regular reviews of the scheme.

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DETAIL:

1 Introduction

1 Background

- 1.1 Over the past couple of years Landlord Services has seen an increase in the number of new tenants who breach their tenancy conditions within the first year of their tenancy. Initially the breaches were in connection with anti social behaviour, but more recently have been around non payment of rent. Introductory tenancies are being reconsidered as a method by which to reduce the number of tenancy breaches and send a message that the Council will not tolerate anti-social behaviour.
- 1.2 Section 124 of the Housing Act 1996 made introductory tenancies available for all local authorities. It can be used where a secure tenancy would usually exist. They enable landlords to regain possession without having to rely on the discretion of the courts.
- 1.3 Where local authorities decide to use introductory tenancies they must be used for all new tenants, except in the following situations:
- a) Someone is a secure tenant of a local authority immediately before the offer of accommodation (not necessarily the same local authority) or a secure or assured tenant of a housing association;
 - b) Where a secure tenancy is being assigned including by way of mutual exchange.
- 1.4 Introductory tenancies convert to secure tenancies after a period of 12 months if the tenancy has been conducted in a satisfactory manner. Powers do exist to extend a probationary period from 12 to 18 months where this is considered appropriate (Statutory Instrument 2006 No 1077).
- 1.5 If the landlord chooses to end the tenancy rather than allow it to become secure, section 128 of the Housing Act 1996 requires the landlord to serve a Notice of Proceedings. This informs the tenant that the Council will be asking the County Court for an immediate possession order.
- 1.6 This notice will:-
- State that the County Court will be asked to make an order for the possession of the introductory tenant's home;
 - Set out the reasons for the landlords decision to apply for an order;
 - Specify a date after which proceedings in the county court may be begun;
 - Inform the tenant of their right to request a review of the decision and the time within which such a request must be made.

- 1.7 Tenants are able to appeal a decision by the landlord to end a tenancy and Statutory Instrument 1997 No 72 sets out the requirements that local authorities must follow where a tenant asks for a review of a decision to seek an order for possession.
- 1.8 For secure tenancies, the Court will apply their discretion in arriving at a judgement. However, in the case of introductory tenancies, this discretion is effectively removed. The only test for the Court to consider will be that procedures have been followed correctly and that the Council has complied with the requirements of the Statutory Instrument set out above.

2 Inspection Regime

- 2.1 Complying with the Government's The Respect Standard for Housing Management is a key priority set out in the Housing Revenue Account Business Plan. The Standard involves six commitments, one of which covers the prevention and early intervention of nuisance and antisocial behaviour. Within the building blocks of this commitment a number of issues are highlighted, including the following:
- a) Ensuring tenancy agreement and leases meet the Office of Fair Trading guidelines and contain clear prohibitions on anti-social conduct ;
 - b) Running user friendly sign-up meetings for the new residents to include a clear explanation of policies on anti-social behaviour, how problems will be addressed, what is expected of the resident and what they can expect in return;
 - c) Undertaking full assessments of any potential problems that may require tenancy support when entering into new tenancy agreements;
 - d) Adopting introductory or starter tenancy schemes (for RSL's) for new residents where appropriate.
- 2.2 Since February 2007, Audit Commission inspections under Key Line of Enquiry (KLoE) 6 covering tenancy and estate management have considered whether an organisation operates a probationary tenancy scheme. An organisation is seen to be delivering excellent services "if it adopts introductory or starter tenancy schemes for new residents and can clearly demonstrate their effectiveness" and an organisation is seen to be delivering fair services "if it adopts introductory or starter tenancy schemes for new residents."

3 The Differences between Introductory and Secure Tenancies

These are as follows for introductory tenancies:

- No security of tenure afforded by a secure tenancy;
- No right to assign (unless part of a divorce or separation settlement);
- No right to transfer;
- No right to take in lodgers;
- No right to make improvements (tenant can improve their property but if they move out during their probationary period, they have no right to compensation);

- No right to buy (although their probationary time does count for discount purposes if their tenancy becomes secure after the probation period has been completed);
- No right to vote prior to transfer to a new landlord.

The landlord can use discretion in dealing with requests that carry no rights.

4 Advantages and Disadvantages

4.1 Why use them?

- The scheme would send a clear message to tenants and others that the landlord is tackling nuisance, anti-social behaviour and rent arrears.
- It can form an effective part of a landlord's response to the Respect Standard for housing management.
- It will assist in the reduction of nuisance and anti-social behaviour among new tenants and discourage the increasing number of tenants who default on rent payments in the early weeks of their tenancies.
- It can enable the landlord to deal with new tenants who behave anti-socially and fail to adopt a consistent rent payment discipline more swiftly than could be the case for a secure tenancy.
- It can encourage tenants to be more willing to report incidents of anti-social behaviour.
- It can also arguably encourage community stability and cohesion and promote the principles of "freedom from fear" and an "inclusive society".
- If set up effectively, such a scheme will be well received by the Audit Commission during inspection and is seen as good practice by the Commission and other professional housing bodies.

4.2 Arguments against introducing a scheme:

- Schemes arguably may not deliver any significant advantages over existing measures available to deal with anti-social behaviour. It is certainly not clear that downgrading of tenancy status for one year will allow the Council to intercept a significant number of instances of anti-social behaviour. Research suggests that tenants around the country who have faced possession action on the grounds of ASB have held their tenancies for an average of 4 years. Some of the risks of accepting an anti-social tenant into our stock could be reduced by improving our protocols with other landlords and statutory agencies, and by improving our processes for assessing applicants;
- Whilst the Respect Standard for Housing Management cites Introductory Tenancies as a potential tool, it also requires landlords to have "clear procedures in place to minimise the use of eviction wherever possible (though it will sometimes be necessary), through use of other tools to tackle anti-social behaviour in situ (e.g. injunctions etc);

- Responsibilities to pay rent regularly and other conditions of tenancy are comprehensively covered through the sign up process (although this does not prevent some new tenants defaulting in the early stages of their tenancy);
- Fears that they may discriminate against vulnerable groups - One of the main concerns voiced about introductory tenancies is their potential to disadvantage the most vulnerable individuals. Under the current arrangements, in order to evict someone, officers have to present a persuasive case to the District Judge in order to gain possession. With Introductory Tenants, officers could be placed under duress by neighbours who would know that eviction is at the Council's' discretion, rather than being subject to the normal checks and balances offered by the legal process, as set out in paragraph 1.8 above.
- Tenants can conduct their tenancy satisfactorily during probation period and breach conditions once period comes to end – although the evidence of local housing providers does not support this;
- Some argue it is a disproportionate response to dealing with the small number of cases who represent problems. The large majority of new tenants abide by their tenancy agreement;
- An average of 30% of new tenancies are to over 60's.

4.3 Whilst the limitations of such a scheme as set out above should be noted, the difficulties in managing compliance with tenancies conditions cannot be understated. Since April 2007, the Council has taken formal action against over 80 new tenants regarding rent arrears alone. To have such high numbers going into arrears in the early months of their tenancy, despite all the advice and support given when signing up new tenants by both Housing and Benefits staff would suggest that a stronger message and more powers to act are needed to help address the problem. Whilst numbers breaching their tenancy conditions due to anti social behaviour in the first year of their tenancy are much lower, the impact on communities of even one case is very high and therefore it is recommended that an Introductory Tenancy scheme be implemented.

5 The Views of Local Housing Providers

- 5.1 Local Housing providers were contacted and asked whether they operate a scheme, the reasons why and comments about its effectiveness. These details are provided in Appendix 1.
- 5.2 Nearly all either already operated a scheme or were in the process of introducing one. The most common reasons being that any organisation committed to tackling ASB, especially given the current inspection regime, would want to use all the tools available to help it do so. Introductory tenancies, if used properly, were seen to offer an effective additional remedy to existing measures.
- 5.3 The experience of those who have operated a scheme for a while is that both the courts and tenants seem to appreciate the difference between introductory and secure tenancies and that therefore threatening action is effective.
- 5.4 Existing tenants are generally in favour of such schemes and have in places been the drivers for their introduction.

6 Monitoring Arrangements

- 6.1 If it is decided that operating an introductory tenancy scheme would be worthwhile, effective monitoring of outcomes will be critical to enable the organisation to demonstrate and review the effectiveness of the scheme.
- 6.2 Monitoring will highlight any areas for concern, for example whether supported tenancies appear to be disproportionately represented in those where possession action is taken and further support is required to assist this group sustain their tenancy.
- 6.3 Effective monitoring is also a requirement of the Audit Commission for those organisations aiming to be excellent in their service delivery.
- 6.4 Effective monitoring of any part of the service also plays a critical role in ensuring that the service is delivered equitably and does not disadvantage particular groups. Each new tenancy should be monitored, along with a full equality and diversity profile and this information needs to be included as part of the Council's equality monitoring programme.
- 6.5 Good practice recommendations suggest the following areas for monitoring:-
- Number of tenancies created;
 - Number of notices for proceedings served;
 - Main breaches of tenancy for which the notice was served;
 - Number of tenancies extended (if the option to extend is included within the scheme);
 - Main breaches of tenancy for which the tenancy was extended;
 - Number of appeals against a notice or extension;
 - Number of appeals upheld and why;
 - Number of appeals rejected;
 - Number of court orders obtained and refused;
 - Number evictions carried out;
 - Levels of turnover and reasons for leaving.
- 6.6 Appendix 2 presents some statistics for new tenancies over the past two years based on the above categories. These figures present the proportion of new tenancies which are general needs and which are sheltered and give an idea of how many breach their tenancy conditions in the first year and therefore the numbers which would be affected by an introductory tenancy scheme.

7 Consultation

- 7.1 Should members consider it worthwhile investigating operating such a scheme, the next stage would be to commence scheme development and conduct full

consultation with all key stakeholders to consider all the implications and whether concerns raised can be addressed through careful scheme design.

- 7.2 It will also be necessary to ensure that the sub regional choice based Lettings Scheme is designed to incorporate the operation of an Introductory tenancy scheme. The Council's Allocations policy will be replaced by a sub regional policy and this in particular will also need to allow for partner providers to operate such a scheme.
- 7.3 The viewpoint of TACT members is represented in section 11 of this report. All tenants will be given the opportunity to comment through a feature in an edition of 'on the house'.
- 7.4 Other consultation arrangements could include the following:-
- Using the tenant talk database to set up special focus groups to identify concerns and collect views;
 - Mail drop or focus groups for applicants;
 - The County Council's Adult and Children's Services, Citizens Advice Bureau and other organisations vital to identify concerns and design a scheme which protects vulnerable groups;
 - Local Strategic Partnership organisations with a role to play, for example, the Police;
 - Our Joint Housing Register partners.

8 Implementation

- 8.1 The main stages of implementation are detailed below:
- Developing the policy and procedures and appropriate documentation;
 - Consultation with stakeholders as above;
 - Computerisation amendments - although Orchard has already been designed to automatically flag the end of probationary periods for officers to authorise progression to secure status;
 - Briefing and training staff;
 - Amendments to tenancy conditions (it is possible to use a combined agreement which sets out those terms that apply to a probationary tenancy and what will apply when it becomes secure, this will mean a tenancy conducted in a satisfactory manner, will automatically revert to a secure tenancy after 12 months without the need to issue a new agreement). As the service is currently reviewing the conditions, this is an excellent opportunity to include amendments required for probationary tenancies as part of the process and to prevent duplication of resources.

OTHER CONSIDERATIONS:

9 CORPORATE STRATEGY (RELEVANCE TO):

- 9.1 The proposals included in this report would contribute to the key Corporate Strategy aims of “Promoting Freedom from Fear” by dealing promptly and effectively with anti-social behaviour and “Promoting an Inclusive Society” by promoting good relationships between all sections of the community.

10 RESOURCE IMPLICATIONS:

- 10.1 The implementation of introductory tenancies will have a significant impact on the Landlord Services Tenancy Service team, both from a project implementation and service delivery viewpoint. Whilst it is not proposed to increase staff resources, it will be necessary to increase time invested in tenancy management for new tenants. This will include intensive tenancy support at the early stages of the probationary period to ensure tenants are given all the guidance and information they need to maintain their tenancy satisfactorily and understand the implications of breaching tenancy agreements. This investment of time should result in a reduced need for intervention at a later stage, although the impact on performance on other areas of tenancy management will need to be monitored closely.
- 10.2 Some additional financial provision will need to be made to fund the implementation process, including the consultation process, promotion, revision to sign up procedures and tenancy conditions etc. This is estimated to be less than £5,000 and will be met from additional income already received over and above the HRA budget for the year.

11 TACT COMMENT

- 11.1 TACT thanks Richard Botham, Head of Landlord Services for the lengthy time window afforded to TACT for discussion to prepare this comment.
- 11.2 As stated in the Executive Summary, an Introductory Tenancy will last for one year. In that time, it is up to the tenant to prove they can be a responsible tenant. TACT does not consider this to be an unfair burden on new tenants and most tenants respect their homes and the areas in which they live.
- 11.3 Tenants that do not respect their homes or communities must expect to pay the price and the Landlord should serve notice and apply to the courts for an immediate possession order. TACT fully supports this and if tenants know what is required of them from the start, it is up to them to meet these obligations.
- 11.4 It is important that the Council publicises this scheme widely if it is implemented. All new tenants must be clearly warned that tenancy conditions will be strictly enforced and of the potential consequences of breaching these conditions. All existing tenants should also be aware of the Council’s commitment on this matter and that confidentiality between tenants and the Council will always be maintained.

- 11.5 The Housing Revenue Account cannot afford to keep paying out large sums when tenants trash their homes and then expect to be rehoused and existing tenants should be protected from neighbours who make their life hell through anti-social behaviour.
- 12 TACT therefore regards Introductory Tenancies as an innovative and positive measure towards developing the Respect agenda in local communities and fully supports its implementation.

BACKGROUND DOCUMENTS:

Probationary tenancies – should you be using them? – Nov 2006 a paper by Pete Ashworth of HQN

Operational records held in the Landlord Services.

APPENDICES:

Appendix 1 - Table of Local Housing Providers

Table of Local Housing Providers

Housing Provider	Scheme operated	Date introduced	Comments
Southampton City Council	Yes	2005	Tight monitoring essential to ensure scheme achieves its purpose. Driver came from tenants who were keen the Council was armed with all the tools available to deal with ASB
Fareham Borough Council	Yes	April 2002	Driver was to deal effectively with tenants who breached their conditions.
New Forest District Council	No	-	Currently at the same stage of investigating introducing a scheme as WCC. Driver keen to adopt all the tools available to deal with increasing problems of ASB.
A2 Housing Group	No	-	WHG considered the idea prior to joining the A2 Housing Group, but didn't investigate formally.
Hyde Housing Association	In progress	-	Driver – review of tenancy agreement and KLOE 6 good practice for tackling ASB
Kingfisher Housing Association	In progress	-	
Testway part of the Aster Group	In progress	-	Several drivers including the Respect agenda, good practice set out in KLOE 6 for excellent performing organisations, reviewing tenancy conditions with the aim of achieving consistency across the group.